

make the appropriate corrections to the system; and

(ii) The financial loss of Title IV, HEA program funds was attributable to a repeated mechanical systemic unintentional error.

(b) In determining the gravity of the institution's or servicer's violation, failure, or misrepresentation under paragraph (a) of this section, the designated department official, hearing official, and Secretary take into account the amount of any liability owed by the institution and any third-party servicer that contracts with the institution, and the number of students affected as a result of that violation, failure, or misrepresentation on—

(1) Improperly expended or unspent Title IV, HEA program funds received by the institution or servicer, as applicable; or

(2) Required refunds, including the treatment of title IV, HEA program funds when a student withdraws under § 668.22.

(c) Upon the request of the institution or third-party servicer, the Secretary may compromise the fine.

(d)(1) Notwithstanding any other provision of statute or regulation, any individual described in paragraph (d)(2) of this section, in addition to other penalties provided by law, is liable to the Secretary for amounts that should have been refunded or returned under § 668.22 of the title IV program funds not returned, to the same extent with respect to those funds that such an individual would be liable as a responsible person for a penalty under section 6672(a) of Internal Revenue Code of 1986 with respect to the nonpayment of taxes.

(2) The individual subject to the penalty described in paragraph (d)(1) is any individual who—

(i) The Secretary determines, in accordance with § 668.174(c), exercises substantial control over an institution participating in, or seeking to participate in, a program under this title;

(ii) Is required under § 668.22 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower, or was required under § 668.22 in effect on June 30, 2000 to return title IV program funds to a lender or to the

Secretary on behalf of a student or borrower; and

(iii) Willfully fails to return those funds or willfully attempts in any manner to evade that payment.

(Authority: 20 U.S.C. 1094 and 1099c)

[59 FR 22450, Apr. 29, 1994, as amended at 64 FR 58618, Oct. 29, 1999; 64 FR 59042, Nov. 1, 1999]

#### § 668.93 Limitation.

A limitation may include, as appropriate to the Title IV, HEA program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A limit on the number or size of institutions with which a third-party servicer may contract;

(d) A limit on the number of borrower or loan accounts that a third-party servicer may service under a contract with an institution;

(e) A limit on the responsibilities that a third-party servicer may perform under a contract with an institution;

(f) A requirement for a third-party servicer to perform additional responsibilities under a contract with an institution;

(g) A requirement that an institution obtain surety, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;

(h) A requirement that a third-party servicer obtain surety, in a specified amount, to assure the servicer's ability to meet the servicer's financial obligations under a contract; or

(i) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

[59 FR 22450, Apr. 29, 1994]

#### § 668.94 Termination.

(a) *A termination*—(1) Ends an institution's participation in a Title IV, HEA program or ends a third-party